

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/204,523 12/03/98 FRANSMAN

A 97-823

TM02/0627

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EXAMINER

BROWN, R

ART UNIT	PAPER NUMBER
2611	10

DATE MAILED: 06/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Advisory Action**

Application No. 09/204,523	Applicant(s) Fransman, et al
Examiner Reuben M. Brown	Art Unit 2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED May 18, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**THE PERIOD FOR REPLY [check only a) or b)]**

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search. (See NOTE below);
  - (b)  they raise the issue of new matter. (See NOTE below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4.  Applicant's reply has overcome the following rejection(s):  
\_\_\_\_\_  
\_\_\_\_\_
5.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached Advisory Action.  
\_\_\_\_\_
7.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8.  For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1-8, 10-25 and 27.  
\_\_\_\_\_
9.  The proposed drawing correction filed on \_\_\_\_\_ a)  has b)  has not been approved by the Examiner.
10.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
11.  Other:

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## ADVISORY ACTION

### *Response to Arguments*

1. Applicant's arguments filed 5/18/2001 have been fully considered but they are not persuasive. On page 3, third paragraph, applicant argues that Nouri does not disclose or suggest the test channel. Examiner respectfully disagrees and asserts that the communication path in Nouri, which connects the system administrator to the various components of the server system 100, reads on the claimed "test channel to verify the integrity of the selected asset...". Examiner points out that "test channel" reads on any communication path or link between the administrator and server component.

Examiner furthermore notes that operating Nouri within the environment of Clark, provides a means for testing the integrity of server assets, wherein the server assets include devices which contain video content scheduled for staggered transmission to subscribers, as recited in the relevant claims. First of all, Clark points out that the serving computer monitors the status of the video players 17, (col. 4, lines 38-45) but does not explicitly discuss the well known technology of a GUI. Nouri provides such a desirable improvement. Secondly, Clark teaches that each of the video players 17, may be set for different start times and that the system offers staggered or overlapping operation, and thus unambiguously teaches staggered

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transmission, see col. 5, lines 4-25. Therefore, examiner respectfully disagrees with applicants assertion on page 3, that, “Clark & Nouri do not disclose a test channel dedicated to testing a selected asset, where the asset includes video content scheduled for staggered transmission to subscribers of the NVOD system.

Applicant further argues on page 4, 4th paragraph that Nouri “does not disclose or suggest that the remote administrator device and the server are connected via a plurality of channel that includes a test channel dedicated to testing the selected asset”. Again examiner points out that Clark provides a plurality channels (col. 5, lines 61-65) between the serving computer 15 and the plurality of video players 17, and teaches monitoring the status of the video players 17. Nouri provides a GUI for remotely monitoring various components of a server. Examiner interprets a dedicated test channel to be broad enough to read on any point in time that a data channel is utilized to transmit test data, the instant channel/communication path is then “dedicated to the test data”, at least at that instant in time. The instant claim does not recite that the dedicated test channel represents to time slots or frequency channel.

Applicant argues on page 6, 5th paragraph that claims 10 & 21 include the feature of transferring the finalized schedule of programming events to a... business support system. Examiner formally responded in claim 21, by stating, “it would have been obvious to transmit the schedule of programs to a billing support system, at least for the desirable purpose of accurately

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billing customers for services performed by the system of Clark". Applicant asserts that "nothing in the disclosure of Clark provides a requisite motivation to support examiner's obviousness rationale". Examiner respectfully disagrees. First of all, Clark discloses that the billing computer 26 receives information for each transaction of the customer, the event code ordered, and **any other data necessary to identify the event code**, [for the billed event], such as date, run time, and price. By stating that any other data necessary to identify an event code, Clark suggests that any data element which include links which correspond to event codes/billed events, would be appropriate to send to the billing support system. Clearly, the administrator of Clark would desire to provide an accurate bill to the clients, which provides the motivation of checking the received event code for a particular client. For instance, the master schedule could provide a means for insuring that each program that a client is billed for actually was scheduled for transmission on the particular date & time. Thus if the date & time of a program that customer is billed for does not match the event code of that particular date & time on the finalized schedule, then the system would automatically provide an alert to instigate further checking, since an obvious error would have been discovered.

Pursuant to the discussion provided above, examiner maintains the final rejection mailed 3/27/2001.

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**Any response to this action should be mailed to:**

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**or faxed to:**

(703) 872-9314, (for formal communications intended for entry)

**Or:**

(703) 872-9314 (for informal or draft communications, please label

"PROPOSED" or "DRAFT")

*Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (703) 305-2399. The examiner can normally be reached on Monday thru Friday from 830am to 430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380. The fax phone number for this Group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

  
ANDREW FAILE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600